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Federal Communications Commission
Office of Secretary

Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 02-352
Table of Allotments, FM Broadcast Stations.	)	RM-10602
(Glenville, Weaverville, and Clyde, North	)	RM-10776
Carolina; Tazewell, Tennessee)	)	RM-10777
	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 05-191
Table of Allotments, FM Broadcast Stations.	)	RM-11243
(Elberton and Union Point, Georgia)	)	

To: Office of Secretary
Attention: Chief, Media Bureau (Audio Division)

OPPOSITION TO PETITION FOR RECONSIDERATION

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December 15, 2005

SUMMARY

Glenville Radio Broadcasters ("GRB"), Stair Company, Inc. a/k/a The Stair Company ("Stair"), licensee of WCTU(FM), Tazewell, TN ("WCTU"), Georgia-Carolina Radiocasting Company, LLC ("GCRC"), Frank McCoy ("McCoy"), and Ashville Radio Partners, LLC ("ARP") (collectively, the "Settling Parties"), by their respective attorneys, hereby respectfully submit their Opposition to the "Petition for Reconsideration" submitted by Willsyr Communications, Limited Partnership ("Willsyr") on October 24, 2005, and also respond to Willsyr's "Comments on Joint Request" submitted on October 11, 2005 ("Supplement"), which is referenced by implication in the Petition for Reconsideration.

Herein, the Settling Parties demonstrate that Willsyr is completely lacking in standing to raise issues with regard to the settlement agreement. Furthermore, as a separate matter, Willsyr has not shown how any action the Commission might take in this proceeding would in any way redress any alleged injury that Willsyr might feel or prevent any further harm to it. Thus, it is clear that Willsyr has no real interest in this matter, nor would any action that the Commission has taken or may take have any impact on Willsyr's interests.

Nonetheless, in order to lay to rest Willsyr's questions and any conceivable uncertainty which may exist concerning certain aspects of the Settling Parties' proposed transactions, the Settling Parties hereby provide the Commission with a demonstration that the transactions described in the Letter Decision and the R&O are ***not*** being used to circumvent the limitations of Section 73.3588 of the Commission's rules.

Specifically, the parties demonstrate herein that two separate transactions are involved here, each of which could have proceeded on their own tracks. For sound business reasons, the two were cross-referenced, as set out in detail herein. Nonetheless, it remains the case that two

distinct transactions are present, each of which involves its own consideration appropriate to that transaction. An examination of the background and business context of each makes clear the legitimate purposes which underlie the agreements among the parties. On the one hand, the parties were seeking to settle a long-pending and disputed application proceeding by reimbursing a portion of one party's (Sutton Radiocasting Corporation's) legitimate and prudent expenses in that proceeding. At the same time, on the other hand, the parties agreed to resolve a similarly long-pending rule making proceeding, which would allow for the upgrade of a station and would compensate Georgia-Carolina Radiocasting Corporation, a party commonly owned with Sutton, for foregoing an opportunity for a new station and in order to allow the rule making proceeding and station upgrade to move forward expeditiously.

Thus, while the two transactions before the Commission do involve the same or affiliated parties, and while entities with common ownership are to receive separate payments aggregating $300,000, the two transactions evolved separately from proceedings which are distinct and unrelated from one another. It is therefore clear that the cross-conditions on the two settlement agreements were ***not*** intended as a circumvention of the limits on reimbursement applicable to the settlement in the instant proceeding. Rather, as set forth in the attached Opposition, these cross-conditions arose as a result of the fact that several parties were common to both agreements, and through negotiations among the parties for entirely proper business reasons which are entirely consistent with Commission rules and policies.

TABLE OF CONTENTS

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1. On September 19, 2005, the parties hereto submitted their Joint Request for Approval of Settlement Agreement, which request was supplemented on September 29, 2005. That request was granted by the Commission, by *Report and Order* in MB Docket No. 02-352, DA

05-2696, released October 14, 2005 ("*R&O*"). Willsyr has now submitted its Petition for Reconsideration, in which it claims that its previous Comments were not addressed and argues that the Commission did not adequately review the settlement agreement in question. It is clear, however, that Willsyr's Comments on Joint Request and Supplement did not raise any issues of merit with regard to the proposed settlement agreement, which would have required a substantive response from the Commission.

2. Moreover, as an initial matter, Willsyr has absolutely no cognizable claim to standing in this proceeding. Willsyr does not even claim any recognized basis for determining that standing exists. Rather, it notes only that the settlement in the instant proceeding is linked to the settlement in a proceeding involving the proposed assignment of the license for WOXL-FM, Biltmore Forest, North Carolina, and the application for license for that station, File Nos. BALH-20040116ACT and BLH-20020220AAL. As demonstrated, however, in the "Opposition to Petition for Reconsideration" filed on November 30, 2005, with regard to the WOXL-FM proceeding, Willsyr clearly does not have standing in that proceeding, much less in one that may be linked to it by contractual terms of a settlement. Here, Willsyr can claim only to be a "member of the public," with no recognizable interest whatsoever in the proceeding at hand. Furthermore, Willsyr does not even attempt to explain how it could possibly be injured by any action that the Commission might take in the instant proceeding. This failure independently demonstrates Willsyr's utter lack of standing. As previously noted by the Commission in proceedings involving WOXL-FM and Willsyr, alleged injury sufficient to confer standing can be found in three ways: "(1) petitioner is a competitor in the market suffering signal interference; (2) petitioner is a competitor in the market suffering economic harm; or (3) petitioner is a resident of the station's service area." *Liberty Productions, a Limited Partnership*, DA 05-1945,

released July 7, 2005, at 6. Willsyr does not even claim to fit into any of these categories. Status as a member of the public does not confer standing in Commission proceedings, especially when that member of the public cannot articulate any way in which Commission action would cause injury.

3. Furthermore, as a separate matter, Willsyr has not shown how any action the Commission might take in this proceeding would in any way redress any alleged injury that Willsyr might feel or prevent any further harm to it. One of the essential elements for standing is a substantial likelihood that the relief requested would redress the injury claimed. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *Conn-2 RSA Partnership*, 9 FCC Rcd 3295, 3297 (1994). Here, Willsyr has not shown how disapproval of the settlement agreement would in any way redress any grievance or assist it in any manner. The only clear benefit to be gained by Willsyr is obstruction of the instant proceedings and thus revenge on parties which have previously prevailed in litigation. Such is the very essence of an abusive filing, and the Commission should take action against Willsyr for an abuse of process in this proceeding. Therefore, the Commission could properly refuse to consider Willsyr's Comments on Joint Request prior to grant of the Joint Request, and Willsyr's Petition for Reconsideration should be summarily dismissed.

4. Even if Willsyr's arguments were to be considered on the merits, however, it has shown nothing that would prevent the Commission from granting approval of the settlement agreement, as it did. Willsyr claims to find some impediment in an alleged conflict of interest of the law firm of Fletcher, Heald & Hildreth, P.L.C ("FHH"). This matter has previously been raised by Willsyr in this very proceeding, however, and the Commission has not indicated any concern. Moreover, Willsyr has not explained how, even if there were some potential conflict,

this issue would be of concern to anyone other than the clients of FHH. It is clear that ARP was fully aware of FHH's prior representation of Biltmore Forest Broadcast FM, Inc. in the prior proceedings stemming from the initial grant of the construction permit for a new FM station at Biltmore Forest, North Carolina, a representation which ended upon termination of the U.S. Court of Appeals proceedings. Given this knowledge, and since ARP has raised no objection or concern, this matter is equally of no concern to Willsyr or otherwise in this proceeding.

5. Willsyr also indicates some concern because GRB omitted its declaration as to no consideration to be paid or received. As set forth in the attached Declaration of John C. Trent, however, this declaration was omitted based upon Mr. Trent's view that it was unnecessary, given that the Settlement Agreement clearly indicates that GRB is to receive no consideration in connection with the settlement, and further given that Mr. Trent himself, who is the principal of GRB, signed the Joint Request. In order to eliminate any question, however, attached hereto is a Declaration of No Consideration signed by Mr. Trent.

6. Given Willsyr's utter lack of standing and the lack of any substantive merit in the claims raised by Willsyr in its Comments on Joint Request, it was entirely proper for the Commission to grant the requested approval of the settlement agreement in this proceeding without specific reference to Willsyr's submissions. As indicated above, the Commission did so grant its approval by the *R&O*. Furthermore, by letter of the Chief, Audio Division, Media Bureau, dated October 17, 2005 (the "Letter Decision"), the Commission shortly thereafter granted its approval of the related "Joint Request for Approval of Settlement" with regard to the WOXL-FM assignment of license and license application proceeding (the "WOXL-FM Proceeding").

7. Willsyr has now sought reconsideration in this proceeding based upon the related

nature of the settlement agreements in this proceeding and the WOXL-FM Proceeding and its speculations concerning other ties among the parties to the two proceedings. Even if all of Willsyr's allegations were true, however, they would present no bar to approval of the settlement agreements.

8. In analyzing this situation, it is important to remember that two separate transactions are involved here that could have proceeded on their own tracks. For sound business reasons, the two were cross-referenced, as set out in detail herein.[1] One transaction ("the Application Settlement") is addressed in the Letter Decision. It provides, *inter alia*, for the reimbursement to Sutton, by Saga,[2] of $100,000, representing a portion of Sutton's legitimate and prudent expenses incurred in connection with matters relating to the applications at issue there. The second ("the Rulemaking Settlement") is addressed in the R&O. It provides, *inter alia*, for a $200,000 payment to Georgia Carolina Radiocasting Company, LLC ("GCRC"), an affiliate of Sutton, in return for the dismissal of a counterproposal and opposition pleadings submitted in that rulemaking proceeding by GCRC..

9. With respect to the Rulemaking Settlement, the Letter Decision observes that "the consideration [in the Rulemaking Settlement] is being paid by Stair Company, Inc., a party that, *as best as we can ascertain*, is unrelated to Saga" and, "thus we are satisfied that the Rulemaking Settlement is not being used to circumvent the legitimate and prudent expense limitation of

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1 The information presented herein was previously provided in the "Opposition to Petition for Reconsideration" submitted on November 30, 2005, and in a "Statement for the Record" submitted November 23, 2005, in the WOXL-FM Proceeding. Since that time, Willsyr has submitted its "Comments on and Objections to Statement for the Record" on December 5, 2005, to advance further spurious allegations with regard to the transactions described herein. A separate response to that filing will be submitted shortly, and none of the allegations most recently made alter the facts set forth herein.

2 Saga Communications of North Carolina, LLC ("Saga").

47 C.F.R. §73.3588." Letter Decision at Footnote 6 (emphasis added). To the extent that the phrase "as best as we can ascertain" may suggest that there might be any doubt at all in the Commission's mind on this point, the Joint Parties offer the following.

2001-2002 – Ashville identifies possible opportunities

10. In 2001, Ashville (and a related entity, Tazewell Radio Partners, LLC ("Tazewell")) investigated the FM allotment situation in the Asheville, North Carolina market and surrounding area and concluded that two stations might afford potential opportunities for development. One was Station WOXL-FM, Biltmore Forest, licensed to Liberty. The other was Station WCTU(FM), Tazewell, Tennessee, which was licensed to Stair Company, Inc. a/k/a The Stair Company ("Stair") as of May 1, 2002. Ashville already owned a station (Station WISE(AM)) which was operating in the Asheville market, and it therefore had an established interest in the market. Having identified the two opportunities, in early 2002, Ashville entered into a time brokerage agreement with Liberty relative to WOXL-FM and Tazewell secured an option to acquire WCTU from Stair.

11. The two transactions were unrelated to each other as each presented particular features plainly distinct from the other. WOXL-FM was a station already operating in the Asheville market. A time brokerage agreement thus afforded Ashville the ability to operate two stations (*i.e.*, WOXL-FM and WISE(AM)) in the market and enjoy the consequent economies of such common operation.

12. By contrast, at the time that Tazewell obtained the WCTU option in early 2002, WCTU was licensed to Tazewell, Tennessee, a considerable distance (approximately 100 miles) from Asheville. Any hope of moving WCTU closer to Asheville was largely speculative. With

the assistance of expert technical and legal consultants, Tazewell determined that WCTU's channel could be reallotted to Weaverville, North Carolina (approximately 10 miles from Asheville), a community with no local radio service. Such a reallotment would be consistent with the statutory mandate of Section 307(b) of the Communications Act. In September, 2002, the opportunity to pursue that possibility presented itself when a petition for rulemaking proposing a channel drop-in in Glenville, North Carolina, was filed by Glenville Radio Broadcasters ("GRB"). In late December, 2002, Stair, with Tazewell's assistance, prepared and submitted a counterproposal in response to the notice of proposed rulemaking issued in connection with GRB's petition. *See* MB Docket No. 02-352.

13. Complicating matters in that docket, a second counterproposal was filed there by GCRC, the Sutton affiliate. Sutton is the licensee of a number of radio stations in North Carolina, Georgia and South Carolina, including two (WFSC(AM) and WNCC-FM) in Macon County, North Carolina, approximately 60 miles from Asheville. In its counterproposal in MB Docket No. 02-352, GCRC/Sutton proposed that a new channel be allotted to Clyde, North Carolina (approximately 20 miles from Asheville). In early 2003, the various allotment proponents filed comments in support of their own proposals and in opposition to the others'. For the next two and a half years, the rulemaking proceeding was in stasis, with no prospect for any resolution at all, and even less likelihood of a quick resolution: because of the mutual exclusivity of the proposals, any resolution in favor of one would have resulted in the rejection of the others, which would then in all likelihood have led to requests for reconsideration or review which would have dragged the matter out for years more.

14. The WCTU opportunity thus appeared to have stalled out for Tazewell/Ashville. By

contrast, the WOXL-FM situation developed independently. In November, 2002, Ashville entered into a "Sub-Time Brokerage Agreement" with Saga relative to WOXL-FM, as well as a separate Time Brokerage Agreement relative to WISE(AM). At that time Saga was also in the process of acquiring Station WLZR(AM) (then WWIT) licensed to Canton, North Carolina, in the Asheville market. [3] With the time brokerage agreements in place, Saga was thus able to program three stations in the same general locality (*i.e.*, the Asheville market) upon the completion of its acquisition of WLZR in early 2003.

2004 – Saga seeks to acquire WOXL-FM and WISE

15. More than a year later, in January, 2004, Ashville entered into an agreement to purchase WOXL-FM from Liberty. Simultaneously, Ashville entered into (a) a second agreement to sell that station to Saga, and (b) a separate agreement to sell WISE(AM) to Saga. Assignment applications (File Nos. BALH-20040116ACT, for WOXL-FM, and BAL-20040116ADC, for WISE) were promptly filed. Objections to the WOXL-FM application were filed – including a petition to deny by Sutton – and action on that application was delayed, through no fault of the applicants, for more than 18 months (until July, 2005). By contrast, the WISE application was granted in November, 2004, and the transaction was consummated within 90 days.

2005 – An Opportunity to Resolve the WCTU Proceeding

16. In June, 2005, the Commission announced a settlement window for certain contested rulemaking proceedings. *See Public Notice*, DA 05-1688, released June 28, 2005. That window

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[3] Saga entered in an agreement to purchase WLZR in December, 2002. An application for consent to that acquisition was filed in January, 2003 (File No. BAL-20030109AAE). That application was granted in March, 2003, and the sale was consummated shortly thereafter.

gave rise to an opportunity to resolve the long-pending WCTU matter. Tazewell was not then in a position to assume the obligations which would be inherent in a universal settlement of that matter. Saga, however, appeared to be a reasonable candidate for that position in view of its ownership of two stations in the Asheville market and its soon-to-be-granted application to acquire a third (*i.e.*, WOXL-FM). [4] As a result, Saga and Tazewell thereupon entered into an agreement pursuant to which Tazewell assigned to Saga Tazewell's option (dating back three years to 2002) to acquire WCTU. That agreement was entered into in August, 2005. In that agreement, Tazewell committed to using its best efforts to reaching a universal settlement of the WCTU rulemaking proceeding.

17. As the Commission is aware, such a universal settlement was reached. Pursuant to that settlement, Sutton is to receive $200,000 in return for the dismissal of its counterproposal and objections to Stair's proposed relocation of WCTU to Weaverville. While Stair is legally obligated to make that payment to Sutton, the funds to be utilized for that payment were placed in an escrow account funded by Tazewell and Saga, and are to be released to Sutton when the rule making R&O becomes a "final order." If Saga exercises its option to acquire WCTU, Stair will net a certain amount in connection with the transaction. It made commercial sense to Saga and Tazewell to escrow the funds for Stair to pay Sutton since the amount would only have to be reimbursed to Stair in the anticipated sale of WCTU, and Stair was unwilling to assume the risk of paying $200,000 to Sutton in the rulemaking settlement when the sale of WCTU might never

[4] The Liberty-Saga assignment application was granted in early July, 2005, after remaining in pending status for approximately 18 months.

close.[5]

2005 – An Opportunity to Resolve the WOXL-FM Matter

18. When the Rulemaking Settlement was being negotiated, the various interested participants – including Tazewell (and its affiliate, Ashville), Saga and Sutton (and its affiliate, GCRC) – concluded that resolution of any further disagreements relative to WOXL-FM could also be achieved through a separate settlement. The application seeking consent to the assignment of the WOXL-FM license to Saga had been granted in July, 2005, but Sutton had filed a petition for reconsideration of that action, thereby preventing the grant from becoming final. Additionally, Sutton also had pending an application for review of the Bureau's action granting the WOXL-FM license application (File No. BLH-20020220AAL), which had been pending since January, 2005.

19. As a practical matter, while Sutton's pleadings placed a cloud over the yet-to-be-consummated assignment of WOXL-FM to Saga, they did not prevent the assignment of the station from moving forward. To be sure, Sutton's pleadings conceivably could result, at some future time before the Commission or some other forum, in the reversal of the grant of the license or the assignment application. While the possibility of reversal under these circumstances is not to be taken lightly, the likelihood of such reversal is a matter which can be evaluated by prudent businesspeople in the ordinary course of risk assessment. Most

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[5] The parties call the Commission's attention in particular not only to the fact that Saga has an option to acquire WCTU, but also to the fact that some of the funds to be paid by Stair to Sutton will come from Saga. Stair and Saga are not directly related in any way – they share no common ownership, officers or directors – and thus the Commission's assumption (*i.e.*, Stair is "unrelated to Saga") stated in Footnote 6 of the Letter Decision is valid and accurate. However, the two companies *do* have contractual relations, as discussed herein, even though (also as discussed herein), those relations do not alter the correctness of the Letter Decision. It should also be noted that the source of the $200,000 to be paid to Sutton is of no particular consequence, since the Commission's primary concern in such matters is the identity of any parties proposed to receive consideration. Here, the party on the receiving end of the consideration is Sutton, and the $200,000 to be paid to it was fully disclosed.

importantly, notwithstanding the pendency of Sutton's pleadings, Liberty and Saga were authorized by the Commission to proceed with the consummation of the assignment. That is, they were in a position to assess the risk of going forward with the assignment notwithstanding Sutton's pleadings, and if they chose to do so, they were authorized by the Commission to complete that deal.

20. Taking these factors into consideration, and considering also the fact that Sutton's legitimate and prudent expenses subject to reimbursement in a settlement were approximately $160,000, the parties negotiated a settlement payment to Sutton from Saga in the amount of $100,000.

Discussion

21. The foregoing demonstrates that the Rulemaking Settlement is not being used to circumvent the legitimate and prudent expense limitation of 47 C.F.R. §73.3588. While the two transactions before the Commission do involve the same or affiliated parties, and while Sutton (or its affiliate) is to receive separate payments aggregating $300,000, the two transactions evolved separately from proceedings which are distinct and unrelated from one another. Most importantly, each of the two payments to Sutton – *i.e.*, the $100,000 payable in connection with the WOXL-FM matter and the $200,000 payable in connection with the Rulemaking Settlement – reflects a bona fide price, negotiated at arm's length, supported by the consideration being obtained in return.

22. In the WOXL-FM matter, Saga is obtaining the withdrawal of Sutton's pleadings, thereby eliminating whatever potential uncertainties, efforts and costs the continued pendency of those pleadings might have presented. While Saga is confident that Sutton's pleadings were

without merit and that the grant of the WOXL-FM license application and assignment application would be affirmed by the Commission and the courts (if Sutton were to avail itself of all possible review fora), the dismissal of Sutton's objections removes any conceivable doubt and relieves Saga of the need to dedicate any further effort and expense (including attorneys' fees) to addressing those objections. In light of those considerations, a $100,000 payment is plainly reasonable. This is particularly so because it represents considerably less than the maximum which Sutton could have claimed under the Commission's limits on reimbursement of expenses.

23. By contrast, resolution of the Rulemaking Settlement presented Stair, Saga and Tazewell with substantially greater benefits, and thus justified a substantially greater payment to Sutton. The rulemaking proceeding involved multiple conflicting allotment proposals posing judgment calls subject to potential challenge on review. Most importantly, unless and until the Commission's staff took some action, any action, to resolve the proceeding, the matter was in a state of regulatory limbo, a condition in which the proceeding had already been mired for nearly three years (since December, 2002) and which could have continued for more years thereafter. As reflected in the parties' various agreements, the relocation of WCTU as proposed in the rulemaking would, in addition to (a) bringing local service to a community currently lacking such service and (b) expanding the number of listeners in the station's service area, dramatically increase the value of that facility. Thus, standing pat, doing nothing, and waiting for the Commission to take action would have left the parties in their regulatory stasis. By contrast, by negotiating a mutually agreeable settlement, the parties have eliminated the blockage and facilitated adoption of its rulemaking proposal, an action which will bring considerable

Section 307(b) benefits to the public while enhancing the value of its station by a factor far, far greater than the cost of the settlement payment to Sutton.

24. Moreover, the Rulemaking Settlement entailed the relinquishment, by Sutton/GCRC, of the potential to acquire the Clyde allotment which it had proposed in the rulemaking. The counterproposal advanced by Sutton/GCRC would, if adopted, have given Sutton/GCRC at least the potential opportunity to construct and operate a new station in Clyde. The Rulemaking Settlement thus contemplated not only the acquisition, by Saga, of a business opportunity, but also the corresponding loss, by Sutton/GCRC, of a similar opportunity. The consideration to be paid to Sutton/GCRC in connection with the Rulemaking Settlement was designed, in part, to compensate GCRC for that loss.

25. To summarize, then, through the Application Settlement, Saga is merely eliminating the potential nuisance of continued litigation; through the Rulemaking Settlement, Stair and, ultimately, Saga are clearing the path for a ruling without which Stair would be left with a station in Tazewell, Tennessee, but with which Stair (and, again, ultimately Saga) would be able to relocate that station, improve its service, and substantially increase its value. Further, through the Rulemaking Settlement Sutton/GCRC is passing up a potentially lucrative business opportunity; by contrast, through the Application Settlement, Sutton/GCRC is merely withdrawing certain objections to applications which have already been granted. After consideration of the potential costs and benefits underlying each of the separate transactions, the parties concluded that a $100,000 payment was reasonable to resolve the application matter, and a $200,000 payment was equally reasonable to resolve the rulemaking matter. Thus, the Rulemaking Settlement is clearly ***not*** being used to circumvent the limits on reimbursement

applicable to the Application Settlement. Rather, the Rulemaking Settlement reflects the separate, bona fide, arm's length negotiations of the parties and, as discussed above, the substantially greater value which the parties reasonably and legitimately attach to prompt resolution of the rulemaking proceeding.

26. The Settling Parties note that the two separate settlements do provide that the parties' respective obligations under each agreement are conditioned upon the performance by the parties of their obligations under the other agreement. These cross-conditions arose as a result of the fact that several parties were common to both agreements. Because of that commonality and the consequent fact that, over the course of the negotiation of both agreements, the parties recognized that all of their various differences could be resolved promptly and efficiently once both settlements were approved, it seemed a reasonable and natural approach to require that all parties perform all of their respective obligations in order to assure that desirable result.

27. As set out above, the two transactions involved here – the Rulemaking Settlement and the Application Settlement – began at different times and progressed on completely unrelated schedules. Each transaction is independently justified and justifiable on the basis of good faith business analysis. Indeed, the fact that the two transactions happened to be entered into at the same time is purely a function of the Commission's own actions, and not any attempt by the parties to circumvent the rules. But for the fact that the Commission happened to open a settlement window for contested rulemaking proceedings at almost precisely the same time that the staff happened to grant the long-pending WOXL-FM assignment application, the fortuitous confluence of these transactions would not have occurred. To be as clear as possible, the foregoing establishes that the cross-conditions were ***not*** intended as a circumvention of the limits

on reimbursement applicable to the Application Settlement.

28. It is therefore clear that Willsyr's "Petition for Reconsideration" is utterly lacking in merit and should be summarily dismissed. Willsyr has no standing to even file such a petition, has demonstrated no injury that it could possibly suffer as the result of any Commission action in this proceeding, and has raised no issue of substance with regard to the correctness of the Commission's Letter Decision. Thus, Willsyr's "Petition for Reconsideration" is not only devoid of merit but is an abusive filing which should be dismissed forthwith, with consideration of appropriate sanctions.

Respectfully Submitted

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December 15, 2005

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CERTIFICATE OF SERVICE

I, Kerry Allden-Collins, a secretary at the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing Opposition to Petition for Reconsideration were mailed, U.S. first class mail, postage prepaid, on this 15th day of December, 2005, addressed to the following:

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